different problem would have been presented but inasmuch as he has continued in possession of the premises for four years, his action is clearly deceit. Most of the cases are in agreement that falsity alone is insufficient; *Douglas* v. *Plotkin, supra,* a lower court case, is *contra.*

The decision sheds little light on the problem of whether a negligently false statement will be sufficient for deceit. There are cases that say that the statement must be made with knowledge of the falsity; a larger number in Ohio, that a negligently false statement is sufficient. Between these views are assertions that the statements must have been knowingly false or grossly negligent. The principal case says that to establish liability defendant must be shown to have been guilty of "culpable negligence." The expression is unfortunate. Is culpable negligence more than ordinary negligence? Is it equivalent to gross negligence? Are degrees of negligence to be recognized in deceit cases in Ohio? The leading English case of *Peek* v. *Derry, supra,* holds flatly that a false statement negligently made is not sufficient for an action of deceit and a majority of the American cases purport to follow this view. With numerous statements in the Ohio cases both for and against the doctrine, a new authoritative statement by the Supreme Court that would definitely align Ohio with or against the majority American view that knowledge of the falsity is essential to an action in deceit, would be helpful.

ANNA FAYE BLACKBURN

DEFAMATION

LIBEL AND SLANDER — ORAL STATEMENTS HELD TO BE LIBEL INSTEAD OF SLANDER

The plaintiff was an electrical contractor in the city of Elyria, Ohio. Being a strong proponent of municipal ownership, he, both voluntarily and by request, advised public officials in northern Ohio against accepting the rate proposals of the defendant company. In September of 1932 the company received an anonymous letter attacking the plaintiff's character and reputation. This was forwarded to the defendant's general manager in Cleveland who selected certain statements from the letter and deleted all portions favorable to the plaintiff. A short time later the citizens of Amherst were considering the sale of their local distributing system to the company, and, on October 13, arranged a public discussion meeting at which the general manager was to speak. The plaintiff spoke in opposition to the proposal. Following his remarks the general manager arose and announced to the

audience that he was about to read from the anonymous letter. The statements read were defamatory and, in substance, described the plaintiff as a professional agitator who could be "bought off" by any corporation for a few thousand dollars. On the basis of this reading the plaintiff brought an action of *libel*. The trial court awarded a judgment of five thousand dollars against the defendant.

An appeal was taken on the ground, *inter alia*, that the action should have been *slander* instead of *libel*. In support of this it was claimed that reading aloud is no more than simple speaking, since both involve *oral* publication. The court of appeals, however, affirmed the judgment and, speaking through Judge Washburn, held that whenever a person announces to a third party that he is going to read aloud from a writing, and does so read, an action of libel will lie if the writing was defamatory and was heard and understood by such third party. *Ohio Public Service* v. *Myers*, 54 Ohio App. 40 (1934).

The most familiar distinction between libel and slander is that the former is written while the latter is spoken. This definition early proved inadequate, however, because it fails to account for defamation by means of pictures, cartoons, effigies, etc. A better distinction is expressed by Newell as follows: "*Libel* is defamation published by means of writing, pictures, images, or anything that is the object of *sight*. *Slander* is defamation * * * published orally, by words spoken, being the object of the sense of *hearing* * * * ." Newell, *Slander and Libel*, 4th Ed., 1924, p. 1. To the same effect are Odgers, *Libel and Slander*, 6th Ed., 1929, p. 2-8, and 36 C.J. 1146. But even this distinction will not explain certain cases where actions of libel have been predicated on statements which were oral in their inception or were published orally. In certain situations there appears to be such a close relationship between oral and written statements that the courts permit actions of libel. Such situations are presented in reading aloud from a defamatory writing, (as in the principal case) dictating to a stenographer, or transmitting by *sound* a defamatory telegram. In other cases, particularly those involving the radio, phonograph, and talking pictures, the injury to the plaintiff is of such character that, as a matter of policy, courts have classified the defamation as libel in order to invoke the rule of damages applicable to that type of action.

The holding in the principal case is amply supported by authority. As early as 1610 Coke in *De Libellis Famosis*, 5 Coke Rep. 60, and *John Lamb's Case*, 9 Coke Rep. 60, is quoted as saying that an action of libel will lie when a party maliciously reads or sings a libel to another, or having heard it read or sung, repeats it. Many of the later cases

assume without comment that reading aloud from a defamatory writing is libel rather than slander and discuss instead the question of whether there was oral publication. *McCoombs* v. *Tuttle*, 5 Black Rep. (Ind.) 431 (1840); *Adams* v. *Lawson*, 17 Grat. (Va.) 261, 94 Am. Dec. 455 (1867), where defendant told witness of letter's contents after mailing; *Snyder* v. *Andrews*, 6 Barb. (N.Y.) 43 (1849); *Johnson* v. *Hudson and Morgan*, 7 Adolp. & Ellis 233 (1836), where publication was by singing in the streets; *Miller* v. *Donavan*, 16 Misc. Rep. 543, 19 N.Y.S. 820 (1896); *Forrester* v. *Tyrell*, 9 Times L.R. 257 (1893); Newell, 4th Ed., p. 233; Odgers, 6th Ed., p. 131-44; 36 C.J. 1229. In *Heare* v. *Stowell*, 12 A. & E. 719 (1840) it was said that reading aloud from a writing would support either libel or slander. *Bosdell* v. *Dixie Stores Co.*, 167 S.E. 834, 168 S.C. 520 (1930), seems contrary to *Adams* v. *Lawson*, *supra*, as to publication by quoting from a letter already mailed. Also, there is no publication where the plaintiff reads the defamatory letter to a 3rd party, *Lyon* v. *Lash*, 74 Kan. 745 (1906), unless the defendant should anticipate such reading, *Lane* v. *Schilling*, 279 Pac. 267 (1929).

The *oral* discussion of defamatory matter between two defendants while composing a letter to the plaintiff may be sufficient publication of a *libel*. *Miller* v. *Butler*, 60 Mass. 71 (1850); but has been held insufficient in *Busby* v. *First Christian Church*, 153 La. 371, 95 So. 869 (1923) and *Senacour* v. *Societe La Prevoyance*, 146 Mass. 616 (1888). The court in *Weston* v. *Weston*, 82 N.Y.S. 351 (1903), reasoned that oral statements made to newspaper reporters with the purpose of having them published was libel and not slander. *Valentine* v. *Gonzales*, 179 N.Y.S. 711 (1920); *Wheaton* v. *Beecher*, 79 Mich. 443 (1890).

The specific point as to whether dictation of defamation to a stenographer is libel or slander has received discussion in only four cases. *Angelini* v. *Antico*, 31 New Zealand Rep. 841 (1912) held that dictation was actionable as slander until transcribed, but as libel thereafter. Cardozo seems of the same opinion in *Ostrowe* v. *Lee*, 245 N.Y.S. 393 (1931); while *Gambrill* v. *Schooley*, 93 Md. 48, 52 L.R.A. 87 (1901) and *Ferdon* v. *Dickens*, 161 Ala. 181, 49 So. 888 (1909), would permit either libel or slander when the letter was dictated and sent to the plaintiff. Other cases have been decided on questions of publication or privilege.

If the party dictating and the stenographer bear a master-servant relationship sufficient publication is generally found. *Ferdon* v. *Dickens*, *supra*; *Nelson* v. *Whitten*, 272 F. 135 (1921); *Modisette* v. *Adams*

& Lorenze, 163 La. 505, 112 So. 397 (1927); *Pullman* v. *Hill*, 1 Q.B. 524, 39 Week Rep. 263 (1891); *Morgan* v. *O'Regan*, 38 New Brun. 189 (1907); *Pauterback* v. *Gold Medal Co.*, 7 Ont. L.R. 582 (1885). But in *Freeman* v. *Dayton Scale Co.*, 159 Tenn. 413 (1928) transcription by the stenographer was viewed as a mechanical process involving no publication to her. *Gambrill* v. *Schooley*, *supra*, is directly *contra* on this point. Where dictator and stenographer are fellow servants—e.g., both employees of a corporation—several cases fail to find sufficient publication. *Owen* v. *Ogilvie Pub. Co.*, 53 N.Y.S. 1033 (1901); *Wells* v. *Belstrat Hotel Corp.*, 208 N.Y.S. 625 (1925); *Cartwright-Caps Co.* v. *Fischel & Kaufman*, 113 Miss. 359, 74 So. 869 (1917); *Central of Ga. Ry. Co.* v. *Jones*, 18 Ga. App. 414 (1916). But contrary to this view are *Sun Life Assur. Co.* v. *Bailey*, 101 Va. 369 (1902); *Berry* v. *City of N. Y. Ins. Co.*, 210 Ala. 369, 88 So. 134 (1923); and, by dictum, *Kennedy* v. *Butler*, 245 N.Y. 204 (1927). Recovery was defeated by privilege in *Baxius* v. *Goblet Freres*, 1 Q.B. 843 (1894); and *Edmonson* v. *Birch, et al.*, 1 K.B. 371 (1907).

Although *sound* is the medium by which telegrams are received and, in the language of Newell, "the object of the sense of hearing," the transmission was held to be libel, not slander, in *Peterson* v. *Western Union Tele. Co.*, 72 Minn. 41 (1888). The court reasoned that sending a written message by sound was analogous to reading aloud from a writing. *West. Union Tele. Co.* v. *Cashman*, 147 Fed. 367, 9 L.R.A. (N.S.) 140 (1906); 36 C.J. 1229; 17 R.C.L. 317.

There is always an effort on the part of plaintiffs to bring their particular action within the catagory of libel. The reason for this is that, in libel actions, special damages need not be proved. In all the foregoing cases the courts have yielded to this effort because, as suggested above, the oral and written forms of the defamation are so closely allied. But in the cases which follow other considerations have impelled the courts.

Historically, the injuries sustained through libel were said to be more serious than those resulting from slander because, being written, it was (1) more deliberate, (2) more widespread, and (3) more permanent. But, as in many other fields, scientific advances have disrupted old established rules of law. Oral statements made over a nationwide broadcasting chain or in a widely disseminated talking picture are certainly more injurious than many written defamations.

Realizing the great harm which may be inflicted by these new instrumentalities, defamation, through them, has been made actionable with-

out proof of special damages. But in order to do this courts have been forced to classify the wrong as *libel* instead of *slander*. Thus, in *Sorensen* v. *Wood, et al.*, 123 Neb. 345, 82 A.L.R. 1098 (1932), radio station KFAB was held liable for defamation delivered orally over the air without proof of special damages. For a general discussion of the problem, and criticism of this case see J. E. Royce, "Defamation via Radio," 1 Ohio St. L.J. 180. *Miles* v. *Wasmer*, 172 Wash. 466 (1933), another radio case, did not rule as to whether the injury was libel or slander. But the legislature of Washington in 1935 enacted that: "Every malicious publication by writing * * * radio broadcasting, or which shall * * * transmit the human voice or reproduce the same from records or other appliances or means * * * shall be libel." Wash. Crim. Laws, Ch. 117, sec. 2424. This obviously includes phonograph and dictaphone records, talking pictures, etc.

There seem to be only three cases involving defamation by motion pictures. The action was obviously libel in *Merle* v. *Sociological Research Film Corp.*, 152 N.Y.S. 829 (1915) where a silent film was in dispute. But *talking* pictures gave rise to the same action in *Brown* v. *Paramount Public. Corp.*, 270 N.Y.S. 544 (1934), which involved an imputation of immorality in the picture "An American Tragedy." An English case, *Yousoupoff* v. *M. G. M. Pictures, Ltd.*, reported in the *N. Y. Times* on March 6, 1934, expressly held the action to be libel instead of slander. A large verdict of £25,000 was awarded in this case, which arose from certain imputations, made orally, in "Rasputin and the Empress."

LYLE E. TREADWAY

DIVORCE

DOMESTIC RELATIONS — RECOGNITION OF FOREIGN DECREES OF DIVORCE WHERE DOMICILIARY REQUIREMENT IS SHORT OR ABSENT

Of all divorce problems, that of the divorce obtained in a sister state or foreign country is one of the most complex. This fact is due to the great diversity of "residence" requirements. The following are the "residence" requriements of the jurisdictions under discussion: Nevada, six weeks;[1] Idaho, ninety days;[2] Arkansas, three months;[3] Florida, three months;[4] Mexico, no residence whatsoever, and a divorce may be

[1] Nev. Sess. Laws, 1931, Chap. 97.
[2] Idaho Gen. Code, 31-701, 1932.
[3] Ark. Sess. Laws, 1931, Chap. 71.
[4] Laws of Fla., 1935, p. 444.